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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,213	07/11/2003	Philip Lee Childs	RPS920030060US1	4227
45211	7590	02/01/2006	EXAMINER	
KELLY K. KORDZIK WINSTEAD SECHREST & MINICK PC PO BOX 50784 DALLAS, TX 75201			MOAZZAMI, NASSER G	
		ART UNIT	PAPER NUMBER	
		2187		

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/618,213	CHILDS ET AL.	
	Examiner Nasser G. Moazzami	Art Unit 2187	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 December 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.  
 4a) Of the above claim(s) 8-12 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7 drawn to backup, classified in class 711, subclass 162.
- II. Claims 8-12 drawn to backup, version management and data normalization, classified in class 707, subclass 203-204.

I. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has a utility such as backing up data from one system to another system and invention II has separate utility such as managing different version of backup and data normalization. See MPEP § 806.05(d).

II. Because these inventions are distinct for the reasons given above and the search required for each group is not required for any of the other groups, restriction for examination purposes as indicated is proper.

III. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

IV. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

2. During a telephone conversation with Kelly K. Kordzik (36,571) on 01/26/2006 a provisional election was made without traverse to prosecute the invention of group I, claim1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claim8-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art (AAPA) in view of James (US Patent Application Publication No. 2003/0212862).

As per claims 1, and 6, AAPA discloses a backup system for a computer having a hard drive comprising: a program appliance comprising a program attachable in data communication with the computer; and a data storage appliance attachable in data communication with the computer, wherein the program is configured to copy the files from the hard drive to the data storage appliance **[backup program resident on the appliance 207 instruct the computer 203 to copy data from the computer hard drive to a data storage appliance 205 (page 6, lines 14-20)]**.

AAPA discloses the invention, but fails to specifically teach that the program is configured to copy files from the hard drive to the data storage appliance without installation of the program on the hard drive.

James teaches a portable memory device for attachment to a personal computer by way a USB or other port **[page 1, paragraph 0004]**. The memory device containing at least one applications software package, the application software package being configured to run from the memory device upon connection to the host computer **[page 2, paragraph 0011]** rather than being copied onto computer's hard drive or other permanent memory storage means **[page 4, paragraph 0032]**.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the current invention to use the memory device as being disclosed by James into AAPA backup system in order not to copy potentially confidential or personal information into the computer's permanent memory storage means, leaving it vulnerable to potential access by a subsequent use of the computer system, so that the security is much improved.

As per claim 2, AAPA and James disclose that the program appliance and the data storage appliance are the same appliance [**see AAPA's Fig. 2 and James's memory device**].

As per claims 3, and 7, James discloses that the program is further configured to execute automatically upon the program appliance being attached to the computer [**the application software package being configured to run from the memory device upon connection to the host computer; hot-plugability (page 2, paragraphs 0011 and 0013-0014)**].

As per claim 4, James discloses that the program is further configured to copy the files from the data storage appliance to the hard drive without installation of the program on the hard drive [**the applications software package is adapted to send and/or receive data**].

As per claim 5, James discloses a network in data communication with the computer; and a server computer in data communication with the network, wherein the data communication between the data storage appliance and the computer is provided through the server **[data and application may be transferred by way of modems and a telecommunications network (page 1, paragraph 0003)].**

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser G. Moazzami whose telephone number is (571) 272-4195. The examiner can normally be reached on 7:00AM-5:30PM.  
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2187

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**NASSER MOAZZAMI**  
**PRIMARY EXAMINER**  
01/27/2006